

## PROGRAM LETTER 16-1

**TO:** All LSC Program Directors  
**FROM:** Ronald S. Flagg *RSF*  
General Counsel and Vice President for Legal Affairs  
**DATE:** May 6, 2016  
**SUBJECT:** PAI Cost Allocation and Fees Paid to Other Professionals

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### SUMMARY

This Program Letter provides guidance regarding two issues:

- (1) the extent to which fees paid to other professionals providing services under LSC's regulation concerning private attorney involvement (PAI) at 45 C.F.R. Part 1614 may be allocated to the requirement that recipients spend an amount equal to 12.5% of their Basic Field Grants on PAI, and
- (2) the distinction between *allowable* costs under 45 C.F.R. Part 1630 and *allocation of* costs to the PAI requirement under Part 1614.

LSC has prepared this program letter in response to an inquiry from a funding recipient regarding a PAI case. The case was handled by a private attorney and required an expert to evaluate the client for "moral character rehabilitation." The recipient sought to allocate its payment of the expert's fee to its PAI requirement as an actual cost or expense of the private attorney under 45 C.F.R. § 1614.7(c).

In a PAI case handled by a private attorney or other professional such as a paralegal (case handler), a grantee may allocate to its PAI requirement the full cost of experts whose work contributes to the case handler's preparation of the case. In these circumstances, the expert's fee is *not* subject to the 50% of prevailing market rate cap set forth in 45 C.F.R. § 1614.7(d). This analysis presumes that the cost is allowable as reasonable and necessary under Part 1630.

By contrast, when a case is being handled directly by an attorney or other professional on the recipient's staff who hires an expert to assist in the case, the expert's fee can be allocated to the recipient's PAI requirement only so long as it does "not exceed 50% of the local prevailing market rate for that type of service." 45 C.F.R. § 1614.7(d). If the expert's fee exceeds 50% of the local prevailing market rate, it must be treated as a non-PAI litigation expense, again subject to analysis under Part 1630 as to whether the cost is reasonable and necessary.

**I. The extent to which fees paid to “other professionals” providing services under Part 1614 may be allocated to the PAI requirement.**

The case handler in a recipient staff case or a PAI case may require the services of other professionals to increase the effectiveness and efficiency of their representation. For example, cases requiring psychological or character evaluation of the client may require retention of an “other professional” to serve as an expert witness.

Section 1614.3(g) defines “other professional” as

an individual, not engaged in the practice of law and not employed by the recipient, providing services in furtherance of the recipient's provision of legal information or legal assistance to eligible clients.

For example, a paralegal representing a client in a Supplemental Security Income (SSI) case, an accountant providing tax advice to an eligible client, or an attorney not authorized to practice law in the jurisdiction in which the recipient is located would fit within the definition of *other professional*. An individual granted a limited license to practice law by a body authorized by court rule or state law to grant such licenses in the jurisdiction in which the recipient is located would also meet the definition of *other professional*.

45 C.F.R. § 1614.3(g). As explained in the preamble to the current rule, “LSC intended this definition to cover a wide spectrum of professionals whose services [within their area of expertise] will *help recipients increase the effectiveness and efficiency of their programs* [and] improve *the recipient’s delivery* of legal services.” 79 Fed. Reg. 61773 (Oct. 15, 2014) (emphasis added).

The extent to which fees paid to other professionals providing services under Part 1614 may be allocated to the PAI requirement depends on whether the other professional provides support *to the recipient* as part of *its* delivery of legal information or legal assistance under § 1614.4(b)(2) (50% rule applies) or provides services as part of a PAI case handler’s direct delivery of legal assistance *to a recipient’s client* under § 1614.4(a) (actual expenses rule applies).

**A. Cases handled by recipient staff.**

In cases or matters handled by a recipient's staff, an other professional might provide support "*to the recipient* as part of its delivery of legal information or legal assistance," such as a doctor providing a medical examination of a client. In these cases, the recipient can allocate the other professional's fee to the PAI requirement only when the fee does not exceed 50% of the local prevailing market rate for that type of service. *See* 45 C.F.R. § 1614.7(d).

**B. Cases handled by PAI case handlers.**

Under § 1614.4(a)(1), private attorneys or other professionals (case handlers) may provide direct legal assistance to recipient clients at reduced fees or pro bono. If the case handler engages an other professional (such as a tax accountant) as part of the case, then that professional's fee is an actual cost or expense incurred by the private attorney. Under these circumstances, the recipient may allocate to its PAI requirement the entirety of fees paid to other professionals providing services in furtherance of a non-staff case handler's PAI representation.

The recipient may pay the entirety of the fees charged by these other professionals, either directly or by reimbursing a private attorney pursuant to § 1614.7(c), provided that these costs satisfy the criteria for allowing costs set forth in § 1630.3(a), as discussed in Section II.

**II. Distinction between permissible costs under Part 1630 and allocation of costs to the PAI requirement under Part 1614**

Whether a particular cost is allowable under Part 1630 is a different issue from whether a recipient can allocate a particular cost to PAI. Section 1630.3(a) lists nine requirements that a particular expenditure must meet in order to be an allowable cost covered by an LSC grant. *See* 45 C.F.R. § 1630.3(a)(1)–(9). Like all expenditures, costs incurred through a recipient's PAI effort must meet the requirements of § 1630.3(a)(1)–(9) if they are to be paid with LSC funds.

A particular cost incurred through a recipient's efforts to involve private attorneys and other professionals may satisfy the nine requirements in § 1630.3(a), and thus be an allowable cost of the grant, but this is not dispositive of whether the cost may be allocated to the PAI requirement. In order to determine whether a particular cost is allocable to the PAI requirement, recipients should analyze the cost under Part 1614, as described above.

### **III. Conclusion**

Recipients may allocate to their PAI requirements fees paid to other professionals for providing services in the areas of their expertise to the recipient as part of its delivery of legal information or legal assistance to eligible clients under § 1614.4(b), but only if the fees do not exceed 50% of the local prevailing market rate for that type of professional service. On the other hand, fees paid to “other professionals” engaged by non-staff case handlers and providing representation to clients in PAI direct-delivery cases under § 1614.4(a) should be classified as actual costs or expenses of the PAI case, which are reimbursable under § 1614.7(c) and allocable to the PAI requirement in their entirety. In scenarios involving services provided by other professionals, recipients should determine first whether a cost is allowable under Part 1630, and then determine whether and to what extent the cost can be allocated to the recipient PAI requirement.

If you have any questions or concerns regarding this Program Letter or for further guidance, please contact me at (202) 295-1620 or [rflagg@lsc.gov](mailto:rflagg@lsc.gov).